S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

JASON BAKER,

Plaintiff-Appellee,

v

MICHAEL COUCHMAN,

Defendant-Appellant,

and

PINCKNEY COMMUNITY SCHOOLS,

Defendant.

FOR PUBLICATION
May 30, 2006
9:00 a.m.

No. 264914
Livingston Circuit Court
LC No. 4-020847-CD

Official Reported Version

Before: Smolenski, P.J., Whitbeck, C.J., and O'Connell, J.

WHITBECK, C.J. (*concurring*).

I concur in the lead opinion. I write separately first to respond to the dissent's rather remarkable statement that "[t]his case sets an abominable precedent because it blurs the previously unmistakable lines marking the boundaries of a superintendent's personal liability." *Post* at ___. The abominable precedent, in my view, would be that a school superintendent may prevent a sworn law enforcement officer from contacting witnesses, may direct witnesses not to cooperate with that officer, may interfere with the collection of evidence, may arguably withhold evidence, and may drive a suspect's parents to the sheriff 's department to facilitate the filing of a complaint against the law enforcement investigating that suspect. If such conduct is within "previously unmistakable lines," then I wonder what is outside those lines.

Second, as the lead opinion makes abundantly clear, the issue here is not with the *law enforcement officer's* conduct, however characterized. Rather, the issue is with the *superintendent's* conduct. The dissent's lengthy recitation of the law enforcement officer's alleged transgressions is therefore entirely irrelevant to the issue at hand.

Third, the dissent conjures up a number of hypothetical examples, unmoored to the facts of this case but apparently drawn from unpublished opinions of this Court. *Post* at ___ & n 8. It has always been my understanding that courts exist to decide the cases that actually come before them, not other cases, real or imagined I know of nothing in our jurisprudence that designates us

as judicial knights errant, empowered to wander about the legal landscape and tilt at every available windmill, unhampered by the lack of a factual record or legal argument. Apparently the dissent does not share that understanding and invites us to consider and devise hypothetical solutions for fact situations that are not actually before us. Declining the invitation to join in such an undertaking is, fortunately, an easy task.

Fourth, the dissent states that "[h]olding a superintendent civilly liable for money damages when he acts in the place of the student's parents to protect a student from unjustified acts sets an untenable precedent indeed." *Post* at ___ n 9. Here the dissent overlooks the inconvenient fact that there has as yet been no trial and the superintendent is therefore not being "held" civilly liable. If and when a jury or a judge finds in the law enforcement officer's favor, then, and only then, the superintendent may face civil liability.

Finally, I am at a loss to understand how concluding that there is a question of fact about whether the superintendent interfered with the law enforcement officer in order to make his investigations ineffective and thereby influence his superiors to remove him from his position somehow requires "superintendents to protect themselves by placing the concerns of others over the interests of the children in their charge." *Post* at___. I note that the dissent fails to identify the "others" whose concerns must now trump those of schoolchildren. Further, the dissent does not specify how our decision "requires" superintendents to do anything, much less place the concerns of these unspecified "others" over the interests of schoolchildren. If lurking somewhere below the dissent's rather labored rhetoric is the suggestion that investigating potential or actual crimes at or near schools is not in the interests of schoolchildren, then I can only respond by stating that I can think of nothing that is more in such children's interests.

/s/ William C. Whitbeck